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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/885,307	06/20/2001	Adam Kolawa	41182/JEC/P396	4570
23363 7590 07/18/2007 CHRISTIE, PARKER & HALE, LLP PO BOX 7068 PASADENA, CA 91109-7068			EXAMINER SELLERS, DANIEL R	
			ART UNIT 2615	PAPER NUMBER
			MAIL DATE 07/18/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/885,307	Applicant(s) KOLAWA ET AL	
	Examiner Daniel R. Sellers	Art Unit 2615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6,9,11,24-29,32,33,57,59-65,68,70,72-78 and 81-84 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6,9,11,24-29,32-33,57,59-65,68,70,72-78 and 81-84 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 May 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 1-6, 9, 11, 24-29, 32-33, 57, 59-65, 68, 70, 72-78, and 81-84 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. **Claims 1-6, 9, 11, 24-29, 32-33, 59-64, 68, 72-78, and 81-84** are rejected under 35 U.S.C. 103(a) as being unpatentable over Knee et al. (US Pub 2006/0242665) in view of Gaske et al. (USPN 6,961,430) (hereinafter Knee and Gaske respectively).

4. Regarding **claim 64**, Knee teaches a communication network including a user station (Fig. 1), wherein a method for creating a customized audio program comprises:

*receiving user audio preference information (§ 0121);
selectively tuning to a plurality of audio channels for receiving selected ones of a plurality of audio pieces delivered over the plurality of audio channels, the selected ones of the plurality of audio pieces being identified based on the user audio preference information (§ 0128);
temporarily storing the selected ones of the plurality of audio pieces in a buffer; and
outputting the temporarily stored audio pieces responsive to a detected playback condition, wherein the playback condition is powering-on of the user station (§ 0129).*

Knee teaches all of these features except for a buffer to temporarily store the selected ones of the plurality of audio pieces.

Gaske teaches a method for background caching of programming for later playback (abstract), and Gaske teaches a buffer to temporarily store the selected ones of the plurality of audio pieces (Col. 12, lines 1-35). It would have been obvious for one

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of ordinary skill in the art at the time of the invention to combine the teachings of Knee and Gaske for the purpose of recording preferred audio pieces without user intervention.

5. Regarding **claim 1**, the further limitation of claim 64, see the preceding argument with respect to claim 64. The combination teaches these features, wherein audio characteristic information associated with the plurality of audio pieces is retrieved and compared to user audio preference information for identifying the selected ones of the plurality of audio pieces (Knee, ¶ 0121 and 0128).

6. Regarding **claim 2**, the further limitation of claim 1, see the preceding argument with respect to claim 1. The combination teaches audio characteristic information indicating subject matter content (Knee, ¶ 0128 teaches audio characteristic information indicating music genre, wherein a music genre indicates subject matter content).

7. Regarding **claim 3**, the further limitation of claim 64, see the preceding argument with respect to claim 64. The combination teaches a plurality of audio pieces including music.

8. Regarding **claim 4**, the further limitation of claim 64, see the preceding argument with respect to claim 64. The combination teaches a plurality of audio pieces including voice.

9. Regarding **claim 5**, the further limitation of claim 64, see the preceding argument with respect to claim 64. The combination teaches a plurality of audio pieces inherently including an advertisement.

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10. Regarding **claim 6**, the further limitation of claim 64, see the preceding argument with respect to claim 64. The combination teaches the reception of a user selection of a particular theme, or genre, and identifies a user preference with said particular theme.

11. Regarding **claim 9**, the further limitation of claim 1, see the preceding argument with respect to claim 1. The combination teaches a network that can take many different forms, wherein the network can be a radio broadcast network (Knee, ¶ 0041).

12. Regarding **claim 11**, the further limitation of claim 1, see the preceding argument with respect to claim 9. The combination teaches a computer network.

13. Regarding **claim 24**, the further limitation of claim 84, see the preceding argument with respect to claims 1 and 64. The combination teaches these features.

14. Regarding **claim 25**, the further limitation of claim 24, see the preceding argument with respect to claims 2 and 24. The combination teaches these features.

15. Regarding **claim 26**, the further limitation of claim 84, see the preceding argument with respect to claims 3 and 64. The combination teaches these features.

16. Regarding **claim 27**, the further limitation of claim 84, see the preceding argument with respect to claims 4 and 64. The combination teaches these features.

17. Regarding **claim 28**, the further limitation of claim 84, see the preceding argument with respect to claims 5 and 64. The combination teaches these features.

18. Regarding **claim 29**, the further limitation of claim 84, see the preceding argument with respect to claims 6 and 64. The combination teaches these features.

19. Regarding **claim 32**, the further limitation of claim 24, see the preceding argument with respect to claims 9 and 24. The combination teaches these features.

20. Regarding **claim 33**, the further limitation of claim 24, see the preceding argument with respect to claims 11 and 24. The combination teaches these features.

21. Regarding **claim 59**, the further limitation of claim 1, see the preceding argument with respect to claim 1. The combination teaches the reception of audio characteristic information in advance of the plurality of audio pieces (Gaske, Col. 12, lines 1-6).

22. Regarding **claim 60**, the further limitation of claim 1, see the preceding argument with respect to claim 1. The combination also teaches the reception of audio characteristic information concurrently with the audio pieces (Knee, ¶ 0130-132).

23. Regarding **claim 61**, the further limitation of claim 1, see the preceding argument with respect to claim 1. The combination teaches an audio program that is dynamically generated based on the selected ones of the audio pieces and subsequently played (¶ 0130-0132).

24. Regarding **claim 62**, the further limitation of claim 61, see the preceding argument with respect to claim 61. The combination teaches customized playback times, wherein the time is selected by the user's selection.

25. Regarding **claim 63**, the further limitation of claim 64, see the preceding argument with respect to claim 64. The combination teaches a plurality of audio pieces broadcast over a plurality of channels (Knee, ¶ 0111) based on their broadcast times (Gaske, Col. 12, lines 7-10, Col. 9, lines 27-31, and Fig. 5).

26. Regarding **claim 68**, the further limitation of claim 78, see the preceding argument with respect to claim 1. The combination teaches these features.

27. Regarding **claim 72**, the further limitation of claim 68, see the preceding argument with respect to claim 59. The combination teaches these features.
28. Regarding **claim 73**, the further limitation of claim 68, see the preceding argument with respect to claim 60. The combination teaches these features.
29. Regarding **claim 74**, the further limitation of claim 78, see the preceding argument with respect to claim 61. The combination teaches these features.
30. Regarding **claim 75**, the further limitation of claim 74, see the preceding argument with respect to claim 62. The combination teaches these features.
31. Regarding **claim 76**, the further limitation of claim 78, see the preceding argument with respect to claim 63. The combination teaches these features.
32. Regarding **claim 77**, the further limitation of claim 74, see the preceding argument with respect to claim 64. The combination teaches these features.
33. Regarding **claim 78**, see the preceding argument with respect to claim 64. Knee teaches a user station comprising these features.
34. Regarding **claim 81**, the further limitation of claim 68, see the preceding argument with respect to claim 2. The combination teaches these features.
35. Regarding **claim 82**, the further limitation of claim 68, see the preceding argument with respect to claim 9. The combination teaches these features.
36. Regarding **claim 83**, the further limitation of claim 68, see the preceding argument with respect to claim 11. The combination teaches these features.
37. Regarding **claim 84**, Knee teaches a system creating a customized audio program comprising:

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means for receiving user audio preferences information(Knee, ¶ 0070-0075, 0118-0119, 0121, and Fig. 1-3, 5-6, and 17 read on means for receiving, p. 6, line 6 - p. 7, line 5);

means for selectively tuning to a plurality of audio channels for receiving selected ones of a plurality of audio pieces delivered over the plurality of audio channels, the selected ones of the plurality of audio pieces being identified based on the user audio preference information (Knee, ¶ 0128-0132 read on means for selectively tuning, p. 7, line 30 - p. 8, line 10);

means for temporarily storing the selected ones of the plurality of audio pieces in a buffer (Gaske, Col. 12, lines 1-35 read on means for temporarily storing, p. 9, lines 21-24); and

means for outputting the temporarily stored audio pieces responsive to a detected playback condition, wherein the playback condition is powering-on of an associated user station (Knee, ¶ 0129 and Fig. 18 read on means for outputting, p. 12, lines 3-18).

As shown in the preceding, Knee teaches all of these features except for a buffer to temporarily store the selected ones of the plurality of audio pieces.

Gaske teaches a method for background caching of programming for later playback (abstract), and Gaske teaches a buffer to temporarily store the selected ones of the plurality of audio pieces (Col. 12, lines 1-35). It would have been obvious for one of ordinary skill in the art at the time of the invention to combine the teachings of Knee and Gaske for the purpose of recording preferred audio pieces without user intervention.

38. **Claims 57 and 70** are rejected under 35 U.S.C. 103(a) as being unpatentable over Knee and Gaske as applied to claim 1 above, and further in view of Blum (previously cited).

39. Regarding **claim 57**, the further limitation of claim 1, see the preceding argument with respect to claim 1. The combination teaches the transmitting of a selected audio piece, which is compared to automatically compile audio characteristic data. However it does not teach an audio vector with these features.

Blum teaches a method of classifying audio (abstract), and Blum teaches the use of computing a distance between a user preference vector and an audio characteristic vector (see Blum, Col. 3, lines 22-29). It would have been obvious for one of ordinary skill in the art at the time of the invention to combine the teachings of Knee, Gaske, and Blum for the purpose delivering preferred audio pieces to the user in a more targeted manner (Col. 3, lines 35-56).

40. Regarding **claim 70**, the further limitation of claim 68, see the preceding argument with respect to claim 57. The combination teaches these features.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel R. Sellers whose telephone number is 571-272-7528. The examiner can normally be reached on Monday to Friday, 9am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sinh Tran can be reached on (571)272-7564. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DRS


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SUPERVISORY PATENT EXAMINER